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April 7, 1994

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Re: MD Docket No. 94-19, Implementation of Section 9 of the Communications Act

Dear Mr. Caton:

Enclosed herewith for filing are the original and four (4) copies of MCI Telecommunications Corporation's Comments in the above-captioned proceeding.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI Comments furnished for such purpose and remit same to the bearer.

Sincerely yours,

Donald F. Evans
Director, Regulatory Affairs

Enclosure
DE/ed

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STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on April 7, 1994.

Donald F. Evans
1801 Pennsylvania Avenue, NW
Washington, DC 20006
(202) 887-2601

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of Section 9	)	
of the Communications Act	)	
	)	MD Docket No. 94-19
Assessment and Collection	)	
of Regulatory Fees for the	)	
1994 Fiscal Year	)	

COMMENTS

MCI Telecommunications Corp. ("MCI") hereby submits it comments in the above-captioned proceeding in which the Commission initiates implementation of a new Section 9 of the Communications Act of 1934 ("Act") that was inserted in accordance with Section 603(a) of the Omnibus Reconciliation Act of 1993 ("Statute"). MCI is a facilities-based interexchange carrier that both holds licenses in the domestic fixed microwave service and leases international circuits from other facilities-based providers. MCI will, therefore, be subject to various fees announced in this docket.

In its Notice of Proposed Rulemaking[1] the Commission discusses numerous implementation issues that must be resolved prior to the collection of revenues authorized by the Act. MCI will limit its comments to four matters raised in the Notice: (1) the use of revocation authority for failure to pay fees; (2) specific

[1] Implementation of Section 9 of the Communications Act and Assessment, MD Docket No. 94-19, FCC 94-46, released March 11, 1994 ("Notice").

concerns with several of the multipliers;[2] (e) measurement issues related to multipliers; and (4) timing of payments for "large" fees.

I. Revocation of Licenses Should Not Be Used to Enforce Nonpayment of Fees, Absent Strong Evidence of Bad Faith by the Licensee

As a telecommunications provider that will remit one of the largest fees to the government under Section 9, MCI agrees that the Commission should be able to use revocation of licenses as a tool to enforce payment of fees. Revocation, however, should be restricted to those cases in which on-the-record evidence demonstrates that the licensee acted in bad faith in not paying the required fee. While the Notice suggests that cancellation of licenses will be necessary only in "egregious circumstances,"[3] the Commission should clarify that those egregious circumstances will be restricted to instances in which evidence demonstrates a willful violation of the Statute.

This is a particularly important clarification for those services that currently are not included in Commission databases that can be used to confirm existing licenses. Large corporations such as MCI can have hundreds of licenses that will generate significant fee payments, and they undoubtedly follow procedures for reviewing their licensing records to calculate their fee liability amount. With respect to those services where a Commission database is available, holders of multiple

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[2] Section 9(b)(3) of the Statute grants the Commission broad authority to amend the Schedule of Regulatory Fees, including the units on which fee payments are based.

[3] Notice, at para. 45.

licenses will be able to cross-check their own records against Commission records to verify compliance with the fee schedules. Unfortunately, such a safeguard is not available in all cases. For example, in the domestic fixed radio service, the Commission may be unable to quickly and easily produce a listing of the licenses MCI holds. Without the ability to originate a document that can serve as an "invoice" against which to confirm each entity's licensing records, it will be difficult, if not impossible, to readily resolve discrepancies between the two sets of records.

For this reason, MCI recommends the Commission clarify the Notice as follows. In any circumstance involving an honest dispute based on a good faith effort to comply with the Statute, the Commission should neither assess a late fee nor invoke revocation as a remedy. If the Commission determines that the licensee owes the disputed amount, the remedy should be limited to full payment of the fee. Both license revocation and assessment of a late fee clearly represent too drastic a response to a simple fee dispute.

Accordingly, the Commission should clarify its proposed enforcement of the Statute by stating that revocation will be invoked as an enforcement tool only in those cases where evidence strongly supports a finding of bad faith and willful violation of the fee payment requirement. By the same logic, the Commission also should clarify that assessment of a penalty for nonpayment similarly will be limited only to cases involving egregious disregard of the fee requirement.

MCI further requests that the Commission, as a matter of administrative practice, attempt to resolve nonpayment issues informally before issuing an Order

to Show Cause. In most cases, fee payment disputes should be quickly and easily resolved. This approach also will avoid initiating unnecessary administrative proceedings that will needlessly consume Commission staff resources.

II. Multipliers Should be Changed or Clarified to Ease Administration of the Fee Collection System

One of the administrative difficulties involved in assessing regulatory fees is deciding how to charge the regulated firm. Whether the fee is based on revenues, call signs, number of presubscribed access lines, or some other measure, it is important that the "multiplier" is as concrete and specifically defined as possible. This ensures that the regulated firm, as well as the regulator, can have confidence that the fee paid is the correct one.

In most cases, the Commission has selected specifically defined multipliers that will avoid questions of interpretation. MCI is concerned however, that in the case of competitive access providers -- whose fees will be based on the number of subscribers -- the multiplier needs to be more explicitly defined. A "per subscriber" multiplier raises a number of questions concerning the interpretation of subscriber that will leave the regulated entity uncertain of how to calculate its payment. For example, a subsidiary corporation may or may not be considered one and the same as its parent company. Also, an "affinity group" may join together to qualify for an offering, but it is not clear whether it should count as a single or multiple subscribers.

MCI recommends that the Commission consider another multiplier for use with competitive access providers. While MCI does not advocate a particular

multiplier, it believes that it is better to select one that cannot be subject to interpretation than to use the proposed "per subscriber" multiplier. One possibility is to adopt a "per collocated serving wire center" multiplier, a definite and uncontestable measure.

In addition to this concern, MCI urges the Commission to clarify its proposal to specifically state that resellers of common carrier services must pay regulatory fees.

Finally, MCI requests that in calculating the per access line fees that apply to local exchange carriers, the Commission require these carriers to rely on data they submit to the National Exchange Carrier Association (NECA) in conjunction with ongoing regulatory requirements, instead of the United States Telephone Association data contained in the Notice. LECS file data with NECA pursuant to Commission rules, and carriers reporting false data can face enforcement penalties. LECs provide data to the industry trade association voluntarily and outside of the regulatory process. For this reason, the data filed with NECA make a more reliable multiplier, since these data already are provided to interexchange carriers to allow them to audit Universal Service Fund charges.

III. The Commission Must Clarify How It Will Measure the Multipliers

In issuing its final decision in this docket, the Commission should clarify how it will measure the multipliers it intends to apply to the various regulated sectors. For example, if historical data are to be used to determine the number of presubscribed access lines for interexchange carrier payments, it is not apparent

whether the Commission intends for carriers to base their payments on specific data on file at the FCC or data from some other source. The Commission should be explicit in designating whether carriers should measure lines based on an average number of presubscribed lines in an historical year, or the number of lines on December 31 of the previous year. In each instance, the Commission should clarify how carriers should quantify the call signs, presubscribed lines, access lines, or any other unit in order to avoid confusion and ambiguity in applying the rules.

IV. Number of Installment Payments for Large Fees Should Be Increased

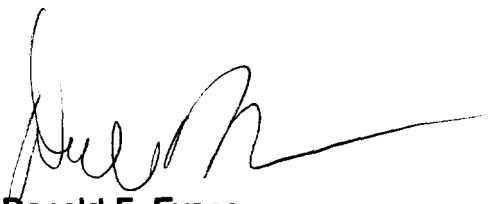
The Notice proposes that "large" fees in each category be made in two installments. MCI encourages that the Commission to consider expanding the number of installments, particularly for fee payments that exceed $500,000 per year. As one of the largest payors under the new system, MCI will be remitting an estimated $1.2 million for its interexchange fee, plus other license fees that will substantially add to its burden. Few other firms regulated by the Commission will owe such a significant amount. The Commission should recognize that the firms that are paying the largest amounts, e.g., over $500,000, should have additional options for payment. Quarterly installment payments are consistent with Section 9(f)(1) of the Statute and strike a better balance between corporate budgeting, cash flow, efficiency, and administrative burden than the two payment schedule suggested by the Commission. MCI, therefore, requests that the Commission

modify its payment schedule to allow quarterly payments for fees in excess of $500,000.

With these modifications and clarifications, the Commission's fees collection program under Section 9 will be easier to administer. MCI respectfully requests that the implementing regulations be changed as described above, and that the Commission seek any technical amendments to the Act necessary to adopt these suggested changes.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION



Donald F. Evans
Director
Federal Regulatory Affairs
(202) 887-2601

CERTIFICATE OF SERVICE

I, Gwen Montalvo, do hereby certify that copies of the foregoing MCI's Comments were sent via first class mail, postage paid, to the following on this 28th day of March 1994:

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HAND DELIVERED**

Gwen Montalvo

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